

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6747

Petition of Central Vermont Public Service)
Corporation, pursuant to 30 V.S.A. § 248(j), for)
a Certificate of Public Good authorizing)
reconstruction and relocation of the Wallingford)
Substation in Wallingford, Vermont)

Order entered: 10/9/2002

I. INTRODUCTION

This case involves a petition filed on April 15, 2002, plus supplemental testimony and exhibits filed on June 14, 2002, by Central Vermont Public Service Corporation ("CVPS") requesting a certificate of public good ("CPG") under 30 V.S.A. § 248(j). CVPS seeks to relocate the existing Wallingford Substation, located in Wallingford, Vermont.

CVPS has served the petition, prefiled testimony, proposed findings, and a proposed order (along with a prospective CPG) on the Public Service Board ("Board"), the Vermont Department of Public Service ("DPS") and the Vermont Agency of Natural Resources ("ANR"), as specified in 30 V.S.A. § 248(a)(4)(C), pursuant to the requirements of 30 V.S.A. § 248(j)(2).

Notice of the filing in this docket was sent on August 13, 2002, to all parties specified in 30 V.S.A. § 248(a)(4)(C) and all other interested persons. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 must file the comments with the Board on or before September 13, 2002. Notice of the filing, with a request for comments on or before September 13, 2002, was also published in *The Rutland Herald* on August 16 and 23, 2002.

The ANR filed comments with the Board on September 13, 2002. In its filing, the ANR does not oppose the proposed project and does not request a hearing. The ANR requests that the CPG include the Board's standard condition language that CVPS "shall obtain and comply with

all conditions and requirements of all necessary permits and approvals" rather than the language proposed by CVPS in its April 12, 2002, filing. The ANR believes that the Board's standard language avoids the conditioning of the proposed construction on future approvals and also directly incorporates any other permits into the terms of the CPG, thus avoiding ANR requests to have conditions in other permits repeated in the CPG. No comment or objection to the ANR request has been received from CVPS.

The DPS filed a Determination under 30 V.S.A. § 202(f) on September 13, 2002.

No comments were received from any other parties or interested persons.

The Board has reviewed the petition and accompanying documents and agrees that, pursuant to 30 V.S.A. § 248(j), a CPG should be issued without the notice and hearings otherwise required by 30 V.S.A. § 248.

II. FINDINGS

Based upon the petitions and accompanying documents, the Board hereby makes the following findings in this matter.

1. CVPS is a duly organized public service corporation with a principal place of business at 77 Grove Street, Rutland, Vermont. Pet. at 1.
2. CVPS owns and operates electrical distribution and transmission systems in the Town of Wallingford, Vermont. Watts pf. at 1.
3. CVPS is proposing to reconstruct and relocate the existing Wallingford Substation, located in Wallingford, Vermont. Watts pf. at 1.
4. The proposed project will consist of the removal of the existing substation and the construction of a new substation of equal electrical capacity on an adjacent lot to the north of an existing hardware store. The existing substation presents safety concerns during maintenance activities. Other than the transformer and circuit breaker, little of the existing equipment is salvageable for continued use. Watts pf. at 1; Watts suppl. pf. at 1-3.
5. Ground and other clearances of some of the equipment within the existing substation is inadequate for safe maintenance practices. In addition, some foundation and steel structure

repair work is needed, along with modifications to the electrical ground system. There is no oil containment system at the existing site. Watts suppl. pf. at 2-3.

6. To make the necessary modifications and repairs at the existing site would require a temporary substation to maintain service during the 6-8 week construction period. Watts suppl. pf. at 3.

7. The proposed site addresses all of the access, safety, and operational requirements of the subject substation. In addition, the proposed site offers aesthetic improvement and additional space for expansion, should it ever be needed in the future. Watts pf. at 3.

8. An oil containment system will be installed at the proposed site. Watts pf. at 3.

9. The proposed location for the new substation involves properties currently owned by CVPS and land in private ownership. CVPS and the landowners have entered into an agreement for a land swap contingent upon receipt of all applicable permits and approvals. The landowners will receive the existing substation lot in exchange for the proposed substation lot. Watts pf. at 2.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

10. The proposed project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 11 through 13, below.

11. The proposed project involves the relocation and reconstruction of existing facilities for the purpose, among other reasons, of increasing system safety and reliability, and will not materially impact existing or potential land uses in the region. The proposed relocation will improve the climate for development in an existing village core, and is supported by the Wallingford Planning Commission. Upton pf. at 1-2.

12. The proposal will not impact areas of natural or cultural significance. Upton pf. at 2-8.

13. The proposed project will not impact any land conservation measures included in the Wallingford Town Plan. The Wallingford Planning Commission strongly supports the proposed

project. The Wallingford Selectboard and Rutland Regional Planning Commission did not make recommendations on the proposed project. Upton pf. at 1-2.

Need For Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

14. The proposed project is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy efficiency and load management measures. This finding is supported by findings 2-4, above. Watts pf. at 4.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

15. The proposed project will not adversely affect system stability and reliability, in fact, the proposed project will improve reliability by replacing most of the old facility with new equipment, by improving conditions for safety and maintenance work, and by allowing the existing substation to function during construction of the proposed new facility. Watts pf. at 1-2; Watts suppl. pf. at 1-3.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

16. The proposed project will result in an economic benefit to the State. This finding is supported by findings 7-9, above, and 17-19, below.

17. The total construction cost for the proposed project is estimated at \$230,000 (2001 dollars). Watts pf. at 4.

18. The proposed project benefits CVPS's customers because it will ensure system reliability and stability by improving working conditions and clearances around the subject proposed facility. Watts pf. at 2.

19. The proposed project provides an economic benefit to the Town of Wallingford by enhancing the useable business space on U.S. Route 7 and by making the northern entrance to the Village of Wallingford more aesthetically pleasing. Upton pf. at 1-2; Upton suppl. pf. at 2.

Aesthetics, Historic Sites, Air and
Water Purity, the Natural Environment and Public
Health and Safety

[30 V.S.A. § 248(b)(5)]

20. The project as proposed will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety. This finding is supported by findings 21 through 49 below, which are based on the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8), (8)(A) and (9)(K).

Outstanding Resource Waters

[10 V.S.A. § 1424a(d)]

21. The proposed project is not located on or near any Outstanding Resource Waters. Upton pf. at 9.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

22. The project as proposed will not result in undue water or air pollution. This finding is supported by findings 23-36, below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

23. The proposed project will not be located in a headwaters area. Upton pf. at 3.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

24. The proposed project as designed will meet any applicable health and environmental conservation regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful toxic substances into ground water or wells. This finding is supported by findings 25 and 27, below.

25. There will be no disposal of any waste material into surface or groundwater. Upton pf. at 4.

26. The proposed substation will include an oil containment system, consisting of a rubber liner filled with crushed stone buried beneath and around the transformer. The containment

system will be of sufficient size to contain all of the oil in the unlikely event of an oil spill.

Watts pf. at 4; exh. DGW-4.

27. Any construction debris will be disposed of at a state approved landfill. Upton pf. at 4.

Water Conservation

[10 V.S.A. § 6086(a)(1)C]

28. The proposed project will not require the use of water. Upton pf. at 4.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

29. The proposed project is located several hundred feet from Otter Creek; it is not in the floodway, but is in the floodway fringe, as defined in the Wallingford Flood Hazard Regulations. Two neighboring property owners each expressed a concern, during the Department of Environmental Conservation ("DEC") process for issuing a Conditional Use Determination ("CUD"), that the proposed project would degrade the ability of the wetland to provide water storage for flood water and storm runoff. The proposed construction is limited to the wetland's upland buffer in previously disturbed areas, impervious surfaces near the wetland have been minimized, and drainage into and out of the wetland will not be changed. Drainage ditches, which already exist on three sides of the wetland, direct water from the two neighboring properties under the railroad tracks to Otter Creek. Flood proofing measures have been incorporated into the design, and the proposed project meets the Development Standards contained in the Wallingford Flood Hazard Regulations. The proposal will therefore neither increase restriction nor diversion of the flow of flood waters, nor endanger the health, safety and welfare of the public or of riparian owners during flooding. Upton pf. at 4-5; Upton suppl. pf. at 2-3.

30. According to the Town of Wallingford, 100-year flood maps show that the proposed site is not within the floodway but rather in the floodway fringe and has an estimated water level of approximately 561.5' above sea level. The proposed finished grade of the substation is 562.5', therefore, the effect on the proposed substation and associated equipment should be minimal during the 100-year flood. Watts pf. at 3.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

31. There are no streams associated with the proposed project. Upton pf. at 5.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

32. The closest shoreline to the proposed site is the Otter Creek, which is several hundred feet away. Upton pf. at 5.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

33. There are Class II wetlands in the proposed project area. The DEC has determined that the proposed project will not significantly affect protected wetland functions and values under the Vermont Wetland Rules. Exh. TOU-2; exh. DGW-3.

34. The DEC has issued CUD #2001-140 for the proposed project. The DEC could not authorize the issuance of a CUD unless it is shown that the proposed project will have no undue adverse effect on this or any other protected wetland function. Finding #16 of the CUD states:

Landowners in this area have experienced flooding problems in the spring and during heavy rain, that is associated with an AOT culvert that goes under Route 7. A previous CUD (#1996-443) allowed the Kimballs to dig a ditch through the wetland to direct water away from this culvert. There are now existing ditches to the south, west and north of the project area that collect surface runoff and direct it to the culvert under Otter Creek. The proposed project is proposing 246-square feet of impermeable surfaces. Gravel surfaces will allow some infiltration of water and should not significantly increase surface runoff. Given that the current drainage patterns will not change, and that there will not be a significant increase in surface runoff from the proposed project, the current hydrology of the wetland should not change. In addition, without significant increases in the amount of stormwater entering the wetlands, and because the proposed project is not changing the physical aspects of the wetland, there should not be an undue adverse impact to the water storage function of the wetland.

Exh. TOU-3.

35. CVPS owns land north of the proposed site. CVPS did not relocate the subject substation to that land because it contains a large part of the Class II wetland that is the subject of the CUD, and is much less accessible than the proposed location. Placing the subject substation

to the north would have a much greater impact on all of the wetland's functions and values protected under the Vermont Wetland Rules, including water storage for flood water and storm runoff. This option is not viable where, as in this case, an alternative exists that has little or no impact on protected wetlands. This option would also be more difficult from a construction standpoint because of the increased amounts of fill that would be necessary to provide adequate access, accommodate the subject substation and yard, and mitigate flood hazards. Exh. TOU -3; Upton pf. at 5-6; Upton suppl. pf. at 1-3.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

36. The proposed project will not result in unreasonable air pollution because there will be no emissions from the proposed project. If any clearing is necessary, vegetative materials will be chipped and mulched or disposed of at an approved off-site location. No burning will be required for this proposed project. Upton pf. at 3-4.

Sufficiency of Water And Burden on Existing Water Supply

[10 V.S.A. § 6086(a)(2)(3)]

37. The proposed project will not require the use of water and will not place a burden on any existing water supply. Upton pf. at 5.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

38. The proposed project as designed will not result in unreasonable soil erosion or reduce the ability of the land to hold water. The DEC has determined that the project as proposed will not significantly affect the ability of adjacent wetlands to stabilize the soil. Erosion control measures, including silt fencing and vegetated drainage swales, will prevent erosion during and after construction. Also, as required under the CUD, CVPS will install, and maintain at all times during construction, a continuous line of silt fencing at the edge of all work in the wetland buffer and adjacent to the wetland. Sediments will be cleaned out when they have reached half the height of the fence or hay bale, and before major predicted rainfall events. Removed sediments will be disposed of in a stable, upland area outside of the buffer zone. All disturbed soils will be

seeded and mulched immediately following final grading, and sediment barriers will be removed upon successful establishment of vegetation. Exh. DGW-3; Upton pf. at 6; Upton suppl. pf. at 1.

Traffic

[10 V.S.A. § 6086(a)(5)]

39. The proposed project will not have any effect on traffic. Upton pf. at 6-7.

Educational Services

[10 V.S.A. § 6086(a)(6)]

40. The proposed project will have no impact on educational services. Upton pf. at 7.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

41. The proposed project will not require any additional municipal or governmental services. Upton pf. at 7.

Aesthetics, Historic Sites or Rare

And Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

42. The project as proposed will not have an undue adverse effect on the scenic or natural beauty, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 43 through 47, below.

43. The proposed project involves the removal of an existing substation at the entrance to Wallingford village in a location directly in front of a local hardware store and inherently difficult to screen from public view. The area from this point northward along Route 7 is considered a "gateway" to the village according to the Town Plan. The Plan states, "A gateway serves to give the message that something of note is ahead, and that drivers should expect to decrease speeds, and prepare to enjoy the experience ahead, perhaps even stopping to sight-see, shop, enjoy a meal or whatever. Gateways should be developed in a way that gives this subtle or not-so-subtle message, and enhances the coming attraction." Moving the subject substation to an area much less visible, and easier to screen, will enhance the entrance to the village and provide an improved climate for the types of development encouraged by the town in the village area. The Wallingford Planning Commission enthusiastically supports the proposed project, in large

part because of the aesthetic benefits it will provide to the public. Upton pf. at 7; Upton suppl. pf. at 2.

44. The proposed project will remove the existing substation from its present location directly adjacent to U.S. Route 7 and move it to a new location where it can be effectively screened from all directions. Exh. DGW-1; Upton pf. at 7.

45. Little clearing will be necessary to accommodate the proposed project. Where clearing does take place, trees and shrubs will be retained that are sufficient to screen the subject relocated substation from view to the north, east, and west. CVPS will install landscaping on the north and south sides of the relocated substation to provide additional screening. The proposed landscaping consists of planting 4-foot northern white cedars. Upon the completion of the proposed construction, CVPS has requested that a field review be conducted with the Board's staff and any other interested parties to determine the detailed planting plan which shall be implemented. Exh. DGW-3; Upton pf. at 7; Watts pf. at 3-4; Watts suppl. pf. at 1.

46. Based on the above, the proposed substation relocation will fit within the context of the area in which it is proposed, and it will improve the aesthetics of the northern entrance to Wallingford village. Upton pf. at 7; exh. DGW-1.

47. There are no known rare or irreplaceable areas in the proposed project area. Nearby buildings of potential historic significance will not be affected by the proposed project. Upton pf. at 7-8; exh. TOU-1.

Discussion

Based on the above findings, the Board finds that this proposed project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, the Board has relied on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called Quechee Lakes decision. Quechee Lakes Corporation, #3W0411-EB and 3W0439-EB (January 1986).

As required by this decision, it is first appropriate to determine if the impact of the proposed project will be adverse. The proposed project would have an adverse impact on the aesthetics of the area if its design were out of context or not in harmony with the area in which it

is located. If it is found that the impact would be adverse, it is then necessary to determine whether such an impact would be "undue." Such a finding would be required if the proposed project: (1) violated a clear written community standard intended to preserve the aesthetics or scenic beauty of the area; (2) if it would offend the sensibilities of the average person; or if (3) generally available mitigating steps were not taken to improve the harmony of the proposed project with its surroundings. The Board's assessment of whether a particular project will have an "undue" adverse effect based on these three standards will be significantly informed by the overall societal benefits of the project.¹

The proposed project will not have an adverse effect on the aesthetics of the area because the adverse visual impacts of the existing substation will be substantially reduced. Any effect on aesthetics will be positive.

Necessary Wildlife Habitat and
Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

48. The proposed project will not impact any designated natural areas or known endangered species sites. Due to its location, the wetland provides only minimal value as habitat for wildlife and migratory birds, according to the report prepared by Pioneer Environmental Associates and the DEC's own findings. The proposed relocation of the substation directly adjacent to a factory, a store, and several residences will not change the amount or quality of human activity around the wetland. The DEC could not authorize the issuance of a CUD unless it is shown that the project will have no undue adverse effect on this or any other protected wetland function. Finding #16 of the CUD states, "There is minimal wildlife and migratory bird habitat in the project area, and the project takes place in a previously disturbed buffer zone. The proposed project will not have an adverse impact on the wildlife and migratory bird habitat function." Upton pf. at 8; exh. TOU-1; Upton suppl. pf. at 3-4.

1. The Board will consider, for example, the possible reduction in the need for a powerplant, transmission investments, or other social costs.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

49. The proposed facilities will not unnecessarily or unreasonably endanger the public or quasi-public investments in any governmental public utility facilities, services, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to such facilities, services, or lands. Upton pf. at 8.

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

50. The proposed project will have no adverse effect on public safety, in fact, both public safety and that of utility workers will be improved, due to increased clearances and other modifications, including an improved substation grounding system. The proposed project shall be constructed in accordance with the requirements of the National Electrical Safety Code. Watts pf. at 1-2; Watts suppl. pf. at 2-3; Public Service Board Rule No. 3.500.

Consistency with Resource Selection**Integrated Resource Selection**

[30 V.S.A. § 248(b)(6)]

51. The proposed project is consistent with the principals for resource selection in accordance with CVPS' approved least-cost integrated plan. The existing substation has several deficiencies. To correct the deficiencies of the existing substation, CVPS either must reconstruct the existing substation at the existing site, which would require a temporary substation to maintain service for the 6-8 week construction period, or consider rebuilding the substation at the proposed new site. CVPS found no lower cost alternatives than the subject proposed project, which addresses all the access, safety, and operational needs. The proposed new site also offers additional space for expansion, if ever required, plus aesthetics improvements over the existing site. Watts pf. at 4; Watts suppl. pf. at 3.

Compliance With Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

52. The project as proposed is consistent with the Vermont 20-Year Electric Plan. Watts pf. at 4. The DPS has determined, in a letter dated September 13, 2002, that the proposed project is consistent with the Vermont 20-Year Electric Plan in accordance with 30 V.S.A. § 202(f), provided that the actions of CVPS in this matter are consistent with the petition and testimony. DPS Section 202(f) Determination.

Outstanding Water Resources

[30 V.S.A. § 248(b)(8)]

53. No designated Outstanding Resource Waters will be affected by the proposed project. Upton pf. at 9.

Existing Transmission Facilities

[30 V.S.A. § 248(b)(10)]

54. The proposed project can be served economically by existing transmission facilities without undue adverse effect on Vermont utilities or customers. Watts pf. at 4.

III. CONCLUSION

Based upon all of the above evidence, the proposed construction will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the reconstruction and relocation of the Wallingford Substation located on Route 7 in the Town of Wallingford, Vermont, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248, and a certificate of public good shall be issued in this matter.

Dated at Montpelier, Vermont, this 9th day of October, 2002.

_____)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 9, 2002

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.